

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

December 4, 1998

)	
UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 98A00073
)	
UNIVERSAL PLASTIC INDUSTRIES,)	
INC.,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA) in which the INS alleges that Respondent Universal Plastic Industries, Inc. failed to prepare and/or make available for inspection Employment Eligibility Verification Forms (Form I-9) for thirty-one named individuals. Penalties were sought in the amount of \$150 for each violation, or a total of \$4,650.

Presently pending are Complainant's Motion for Summary Decision and Motion for Approval of Complainant's Proposed Civil Monetary Penalty Amounts. Respondent has filed no reply to either of these Motions and the time for response has elapsed.¹

I. THE MOTION FOR SUMMARY DECISION

In support of its Motion for Summary Decision, the INS has filed as exhibits a set of Interrogatories and Requests to Produce and a set of Requests for Admission, accompanied by 29 I-9 forms (Exhibit A), a Michigan certificate of incorporation (Exhibit B), a 1995 Annual Report (Exhibit C), six subpoenas (Exhibit D), a request for additional time (Exhibit E), INS' response to the request for additional time (Exhibit F), and four pages identified as Form MESC 1017 for the fourth quarter 1995 (Exhibit G). The motion asserts that no responses were ever made to the discovery requests served on the respondent in August 1998.

Complainant's requests for admission are hereby deemed admitted pursuant to 28 C.F.R.

¹ OCAHO rules, codified at 28 C.F.R. Part 68 (1998), provide that a party shall have ten days from the service of a written motion to respond to it. 28 C.F.R. § 68.11(b).

§ 68.21(d) as follows:

SECTION 1

1. Universal Plastic Industries, Inc. (hereafter referred to as “Respondent”) admits it is a corporation duly organized under the laws of the State of Michigan.
2. The Respondent admits that on March 19, 1996, Thomas Welti, General Manager for the Respondent, was personally served by the INS with Subpoenas: four for employees and two for employment related records.
3. The Respondent admits that on April 3, 1996, the Respondent submitted to an officer of the INS, Employment Eligibility Verification Forms (Forms I-9) for the individuals listed in Section II of these Request for Admissions.
4. The Respondent admits that on April 3, 1996, the officers of the INS did not receive from the Respondent an Employment Eligibility Verification Form (Form I-9) for the individuals listed in Section III of these Admissions.
5. The Respondent admits that on December 20, 1996, the INS personally served Thomas Welti, General Manager for the Respondent, with a Notice of Intent to Fine.
6. The Respondent admits that an individual, Anton Apian PARMAR, a/k/a Shantilal M. PATEL, was employed by Respondent on March 19, 1996 and was unauthorized to work in the United States.

SECTION II

The Respondent admits that each of the twenty-nine (29) Employment Eligibility Verification Forms (Forms I-9) exhibited with this request and attached hereto as Exhibit A, is genuine and relates to the individuals named below:

Beverly AKERS
Maninder OBEROI
Madhav TIMMAGI
Virsinga SOOCH
Kristen KRAJACIC
Holly SMITH
Rabiyaben KHATRI
Jessie FOSTER
Jennie SHOVAN
Cheryl LINDSTROM
Krishna RANA
Rocky ZURAWSKI

Robin PARKER
Danny RICHARDS
Pamela LABELLE
Tammy HARTLINE
Karla REYNOLDS
Madhubhai PATEL
Shardaben PATEL
Chetna MAHANT
Tegiben MAKWANA
Vivian RICHARDSON
James ALLORE
Michael MOCERI
Danny RICHARDS
Debbie PAYNE
Yvette DALE
Michael HINES
Allen WOFFORD

SECTION III

The Respondent admits that the following individuals were hired after November 6, 1986, and worked at least three (3) days:

Shannon INTISAR
Raymond HIRZEL
Vishnubhai PATEL
Trevor RILEY
Myra KROSNICKI
John ROHLOFF
Marcus PAYNE
Fari KHAN
Sayeeda KHAN
Emmanuel SEWELL
Dipti SHAH
Sarabjit KAUR
Bruce EUBANKS
Kalidas PATEL
Bharat SHAH
Shailesh SHAH
Lori MORIN
Lawrence BOWMAN
Steve REYNOLDS
Niru SHAH

Prahladbhai PATEL
Joseph RASTALL
William RAYMOND
Mary ELIAS
Daniel WALLACE
James PAYNE
Charles PAYNE
Danine LONG
John PAYNE
Terri MCKNIGHT
Brian IDZIKOWSKI

SECTION IV

The Respondent admits that it failed to prepare and/or retain for three years after the date of hire or one year after the date the individual's employment is terminated and/or make available for inspection the Employment Eligibility Verification Form (Form I-9) for the following individuals:

Shannon INTISAR
Raymond HIRZEL
Vishnubhai PATEL
Trevor RILEY
Myra KROSNICKI
John ROHLOFF
Marcus PAYNE
Fari KHAN
Sayeeda KHAN
Emmanuel SEWELL
Dipti SHAH
Sarabjit KAUR
Bruce EUBANKS
Kalidas PATEL
Bharat SHAH
Shailesh SHAH
Lori MORIN
Lawrence BOWMAN
Steve REYNOLDS
Niru SHAH
Prahladbhai PATEL
Joseph RASTALL
William RAYMOND
Mary ELIAS

Daniel WALLACE
 James PAYNE
 Charles PAYNE
 Danine LONG
 John PAYNE
 Terri MCKNIGHT
 Brian IDZIKOWSKI

SECTION V

The Respondent admits that each of the following documents exhibited with this request and attached hereto as Exhibits is genuine:

<u>Document</u>	<u>Description</u>
Exhibit B	Certificate of Incorporation in the State of Michigan
Exhibit C	1995 Michigan Annual Report
Exhibit D	Six (6) Subpoenas served on Respondent 3/19/96
Exhibit E	Fax Request for Additional Time
Exhibit F	INS Response to Request for Additional Time
Exhibit G	Form MESC 1017 for 4 th Quarter, 1995, pages 1 - 4

The purpose of summary adjudication is to avoid an unnecessary hearing where there is no genuine issue as to any material fact. United States v. Anchor Seafood Distribs., Inc., 5 OCAHO 742, at 160 (1995).² Once the party seeking a summary decision has demonstrated the absence of a genuine issue, it is the opposing party's responsibility to come forward with specific facts to show that there is a genuine issue. Summary decision may be based on matters deemed admitted. Id. at 161, citing United States v. Primera Enters., Inc., 4 OCAHO 615, at 261 (1994). Here, Universal Plastic Industries, Inc. stood silent, making no response to the evidence that, inter alia,

² Citations to OCAHO precedents reprinted in the bound Volumes 1 and 2, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States, and Volumes 3 through 7, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to Volumes 1-7 are to the specific pages, seriatim, of the entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 7, however, are to pages within the original issuances.

it failed to prepare, retain, or make available for inspection Employment Eligibility Verification Forms for 31 named individuals.

II THE MOTION FOR APPROVAL OF COMPLAINANT'S PROPOSED PENALTY AMOUNTS

In support of the penalties requested, INS submitted a memorandum of law and the Declaration of Special Agent Kenneth A. Shillair. The Declaration states that Shillair was the principal case agent assigned to the investigation of Universal Plastic Industries, Inc., that a worksite inspection was conducted on March 19, 1996 at which time one unauthorized alien was arrested while leaving the building, that the audit showed respondent had failed to complete I-9 forms until about 90 days prior to the audit, that of 60 employees on the payroll for the fourth quarter of 1995, no I-9 forms were completed for 31 employees and that I-9 forms were completed late for 28 employees. One employee was hired prior to November 6, 1986 and not subject to the I-9 requirement. Thus of 60 employees, 59 I-9 forms were either missing or deficient. No charges were premised upon the late completion of 28 I-9s or on the employment of the unauthorized alien.

Complainant's memorandum explains that the penalty request was made considering the size of the business, the good faith of the employer, the seriousness of the violations, whether or not the employee was an unauthorized alien, and the history of previous violations. INS sought aggravation of the statutory minimum penalty of \$100 per violation in the amount of \$50 each based on the seriousness of the violations.

I find these proposed penalties to be reasonable and they are adopted.

III. FINDINGS, CONCLUSIONS, AND ORDER

I have considered the Complaint, Answer, pleadings, motions, and documentary materials submitted. I find on the basis of the record that there is no issue of material fact and that:

1. Universal Plastic Industries, Inc. is a corporation organized under the law of the state of Michigan.
2. The following 31 individuals were hired by Universal Plastic Industries, Inc. after November 6, 1986 and worked for at least three days:

Shannon INTISAR
Raymond HIRZEL
Vishnubhai PATEL
Trevor RILEY
Myra KROSNICKI
John ROHLOFF

Marcus PAYNE
Fari KHAN
Sayeeda KHAN
Emmanuel SEWELL
Dipti SHAH
Sarabjit KAUR
Bruce EUBANKS
Kalidas PATEL
Bharat SHAH
Shailesh SHAH
Lori MORIN
Lawrence BOWMAN
Steve REYNOLDS
Niru SHAH
Prahlabdhai PATEL
Joseph RASTALL
William RAYMOND
Mary ELIAS
Daniel WALLACE
James PAYNE
Charles PAYNE
Danine LONG
John PAYNE
Terri MCKNIGHT
Brian IDZIKOWSKI

3. Universal Plastic Industries, Inc. failed to prepare, retain, or make available for inspection Form I-9 for the 31 individuals named in Paragraph 2.
4. All jurisdictional prerequisites to this action have been satisfied.
5. Universal Plastic Industries, Inc. engaged in 31 separate violations of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a(a)(1)(B).
6. Complainant's Motions for Summary Decision and for Approval of Penalty Amounts are granted.
7. The hearing in this case is cancelled.

Accordingly, respondent is ordered to pay civil money penalties in the amount of \$4,650.

SO ORDERED.

Dated and entered this 4th day of December, 1998.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1998, I have served copies of the foregoing Order on the following individuals at the addresses indicated:

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